

REMARKS

Claims 1-18 have been canceled. Claims 19-38 are newly added to address issues previously raised by the Examiner.

On page 2 of the Final Office Action mailed November 8, 2005, the Patent Office rejected claims 1-18 as indefinite under 35 U.S.C. § 112 for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicant has canceled claims 1-18 and adds new claims 19-38 so that the claims are presented in a more appropriate format. Thus, this rejection is now moot, and Applicant respectfully requests reconsideration of the claims.

On page 4 of the Final Office Action mailed November 8, 2005, claims 1-18 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,997,482 to Vaschillo et al. (hereinafter "Vaschillo"). Applicant respectfully traverses and addresses this rejection in regard to claims 19-38. In order to anticipate a claim, each and every element set forth in the claim must be described in a single prior art reference. MPEP § 2131.

Vaschillo fails to teach or suggest the element of instructing an exerciser to adjust their breathing cycle to coherently match their heart rate variability cycle during a non-stationary exercise. Further, Vaschillo's invention is used for relaxation/meditation, which results in increased voluntary muscle relaxation, thereby teaching away from using the device of Vaschillo during a non-stationary exercise. Therefore, Vaschillo cannot anticipate the claimed invention.

On page 5 of the Final Office Action mailed November 8, 2005, claims 1-18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Vaschillo in view of U.S. Patent No. 6,047,203 to Sackner et al. (hereinafter "Sackner"). Applicant respectfully traverses and addresses this rejection in regard to claims 19-38.

To establish a *prima facie* case of obviousness "all claim limitations must be taught or suggested by the prior art." MPEP § 2143; MPEP § 2143.03. As stated above, Vaschillo fails to teach or suggest all limitations of the claimed invention. Further, Sackner does not cure the deficiency of Vaschillo, because Sackner also fails to teach or suggest that a system or method of instructing an exerciser to coherently match their breathing cycle with their heart rate variability cycle during a non-stationary exercise. Thus, the Patent Office has failed to meet the requirements to establish a *prima facie* case of obviousness based on Vaschillo and Sackner.

Applicant respectfully requests reconsideration of the rejections in light of the amendments and remarks presented herein, and earnestly solicits claim allowance at the Examiner's earliest convenience. Applicant reserves the right to make future arguments about further patentable distinctions between the present invention and the above-cited references.

Respectfully submitted,

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